

**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

SCARSELLA BROTHERS, INC.,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 14-005

SETTLEMENT AGREEMENT

Respondent, State of Washington, Department of Ecology (Ecology), represented by Robert W. Ferguson, Attorney General and Anne M. Powell, Assistant Attorney General, and Appellant, Scarsella Brothers, Inc. (Scarsella), represented by Jessica L. Scarsella, hereby submit this Settlement Agreement (Agreement) to the Pollution Control Hearings Board (Board) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

**I. BACKGROUND**

1. On December 27, 2013, Ecology issued Administrative Order No. 13WRNR-DE 10430<sup>1</sup> and a penalty in the amount of \$36,000 (Order and Penalty) to Scarsella.

<sup>1</sup> The Administrative Order, dated December 27, 2013, mistakenly refers to two docket numbers, 13WRNR-DE 10429 and 13WRNR-DE 10430. The correct docket number for the Administrative Order that is the subject of this appeal is 13WRNR-DE 10430.

2. On January 28, 2014, Scarsella appealed the Order and Penalty to the Board.

3. Ecology and Scarsella have agreed to resolve the appeal of the Order and Penalty through the settlement outlined below.

## **II. SETTLEMENT AGREEMENT**

The parties desire to resolve the dispute herein and avoid the cost and time associated with further litigation. The parties therefore stipulate and agree as follows:

### **A. SCOPE**

This Agreement constitutes the entire agreement between the parties to this appeal, and settles all remaining issues raised by the Order and Penalty. Ecology agrees to deem the Order and Penalty satisfied upon Scarsella's satisfactory and timely completion of its obligations under this Agreement. This Agreement applies only to the Order and Penalty issued on December 27, 2013, and does not in any way limit Ecology's authority to issue other penalties or enforcement actions for violations that are not addressed in the Order and Penalty.

### **B. RESOLUTION OF PENALTY**

Ecology and Scarsella agree to settle the \$36,000 penalty for \$26,400. Satisfaction of the reduced penalty in the amount of \$26,400 shall be as follows:

#### **1. Cash Payment**

Scarsella shall pay \$12,000 to Ecology. Ecology must receive Scarsella's payment of \$12,000 within thirty (30) calendar days of the date the Board dismisses this appeal. If the thirtieth day falls on a holiday or weekend, payment shall be due on the following business day. Scarsella shall make the payment by check or money order directly payable to "Department of Ecology" and make reference to Administrative Order No. 13WRNR-DE 10430 and Penalty, and shall send the payment to:

Department of Ecology  
Attn: Cashiering Section  
P.O. Box 5128  
Lacey, WA 98509-5128

1           **2.     Training**

2           In lieu of a monetary payment to Ecology to satisfy \$14,400 of the \$26,400 reduced  
3 penalty, Scarsella agrees to make sixty (60) of its employees available for up to four-hours of  
4 training conducted by Ecology. The training will cost Scarsella approximately \$14,400 based  
5 on an average wage of \$60 per hour. The training will occur at a mutually agreeable time  
6 within twelve (12) months of the date the Board dismisses the appeal. Training curriculum  
7 will include an overview of the Washington Well Construction statute (RCW 18.104) and  
8 implementing regulations (WAC 173-160), with an emphasis on well decommissioning.  
9 Ecology will contact Jessica Scarsella at (253) 872-7173 of Scarsella to schedule the training,  
10 which will take place at location Scarsella chooses to utilize as a training center in the greater  
11 Seattle/Tacoma area.

12           Specifically, the training will be for sixty (60) Scarsella employees that are directly  
13 associated with construction work or construction contracts, namely project managers,  
14 superintendents, and foremen. Ecology understands that foremen often operate construction  
15 equipment and directly supervise and communicate continuously with operators and laborers  
16 who are likely to encounter wells during construction. Scarsella shall ensure that the  
17 appropriate personnel are present for the training.

18           Should Scarsella not participate in the training per the terms agreed upon within the  
19 one-year time period, the remaining balance of the \$36,000 penalty (\$24,000) will become  
20 immediately due and payable to Ecology without further right of administrative or judicial  
21 review, except as provided in Paragraph II. C of this Agreement.

22           **3.     Accident Prevention Program Update**

23           Scarsella will incorporate language into its Accident Prevention Program noting that  
24 Scarsella is not a licensed well decommissioning firm and include instructions on what  
25 Scarsella's employees should do if they encounter a well while performing work for Scarsella  
26 within a one-year time period.

1 **C. REMEDIES**

2 In the event that Scarsella violates the terms of this Agreement, Ecology may pursue all  
3 remedies available by law. By entering into this Agreement, Scarsella shall have waived its  
4 right of administrative or judicial review on the underlying merits of the Order and Penalty.  
5 However, Scarsella does not waive the right to contest whether violations of this Agreement  
6 have occurred. Ecology shall be entitled to recover its costs, including attorney fees, in any  
7 action brought to enforce this Agreement in which Ecology is a prevailing party.

8 **D. VENUE**

9 Scarsella agrees that the venue for any judicial action to enforce this Agreement and/or  
10 to collect the Penalty, or any portion thereof, shall be in Thurston County Superior Court.

11 **E. SERVICE**

12 In the event Ecology pursues any remedy in Thurston County Superior Court, Scarsella  
13 agrees to accept service of the summons and complaint by United States mail in lieu of  
14 personal service, at Ecology's option. Service by mail shall be deemed complete upon the  
15 third day following the day the summons and complaint are placed in the mail. The current  
16 address that Ecology has for Scarsella is P.O. Box 68697, Seattle, Washington, 98168-0697.  
17 Appellant agrees to accept service at this address unless Scarsella informs Ecology in writing  
18 of any changes to Scarsella's address.

19 **F. PRESS RELEASES AND OTHER DOCUMENTS**

20 Any document prepared by Scarsella related to this settlement, such as a press release,  
21 shall be identified as resulting from a settlement with Ecology.

22 **G. TAX CREDIT DISALLOWED**

23 Scarsella shall not deduct or credit against taxes due or payable any monies paid as  
24 cash payments under this Settlement Agreement, nor otherwise receive any tax benefits from  
25 payment of monies as cash payments under this Settlement Agreement.  
26

1 **H. WAIVER OF APPEAL RIGHTS**

2 Scarsella understands that it has the right to contest the Order and Penalty by presenting  
3 evidence at a Board hearing. Scarsella voluntarily waives its right to a hearing upon signature  
4 and acceptance of this Agreement by representatives for Scarsella and Ecology.

5 **I. RELEASE OF LIABILITY**

6 Scarsella and its heirs, assigns, or other successors in interest, agree to release and  
7 discharge the Department of Ecology and its officers, agents, employees, agencies and  
8 departments from any damages and causes of action of any nature arising out of the incidents  
9 that gave rise to this appeal.

10 **J. DISMISSAL OF APPEAL**

11 The parties consent to the submission of this Agreement to the Board and request that,  
12 based upon a full and final settlement having been reached, the Board dismiss this appeal with  
13 prejudice. Both parties further agree to bear their own costs and attorneys' fees associated with  
14 this appeal.

15 **K. EFFECTIVE DATE**

16 This Agreement shall become effective upon issuance of the Board's order dismissing  
17 this appeal.

18 **L. SIGNATORIES AUTHORIZED**

19 The undersigned representatives for Ecology and Scarsella certify that they are fully  
20 authorized by the party whom they represent to enter into the terms and conditions of this  
21 Agreement and to legally bind such party thereto.

22 ///

23 ///

24 ///

25 ///

26 ///

1 **M. EXECUTION**

2 This document may be executed in counterparts and may be executed by facsimile, and  
3 each executed counterpart shall have the same force and effect as the original instrument.

4 ENTERED THIS 30<sup>th</sup> day of July 2014.  
5 4th August

6 STATE OF WASHINGTON  
7 DEPARTMENT OF ECOLOGY

SCARSELLA BROTHERS, INC.

8 JERRY LISZAK  
9 Water Resources Section Manager  
Northwest Regional Office

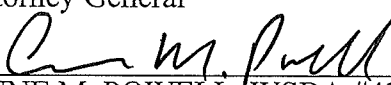
  
FRANK SCARSELLA  
President

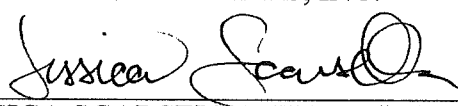
10 Dated: \_\_\_\_\_

Dated: 7/30/14

11 ROBERT W. FERGUSON  
12 Attorney General

SCARSELLA BROTHERS, INC.

13   
14 ANNE M. POWELL, WSBA #42934  
Assistant Attorney General  
Attorneys for Respondent  
15 (360) 586-4607

  
JESSICA SCARSELLA, WSBA #46816  
Attorney for Appellant  
16 (206) 872-7173

17 Dated: 8/4/14

Dated: 7/30/14

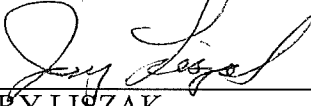
1 **M. EXECUTION**

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3 each executed counterpart shall have the same force and effect as the original instrument.

4 ENTERED THIS 4th day of August 2014.

5  
6 STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

SCARSELLA BROTHERS, INC.

7   
8 JERRY LISZAK  
9 Water Resources Section Manager  
Northwest Regional Office

FRANK SCARSELLA  
President

10 Dated: 7/31/2014

Dated: \_\_\_\_\_

11  
12 ROBERT W. FERGUSON  
Attorney General

SCARSELLA BROTHERS, INC.

13  
14 ANNE M. POWELL, WSBA #42934  
Assistant Attorney General  
15 Attorneys for Respondent  
(360) 586-4607

JESSICA SCARSELLA, WSBA #46816  
Attorney for Appellant  
(206) 872-7173

16 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

